IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 53 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

VISHNUPRASAD M AGARWAL

Appearance:

1. Criminal Appeal No. 53 of 1987

MR.I.M. PANDYA, LD. APP for Appellant No.

MR. SAURABH J. MEHTA for Respondent No. 1-7

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date of decision: 19/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Instant appeal filed under section 378 of the Criminal Procedure Code, 1973, is directed against the judgment dated August 18, 1986 rendered by the learned Addl. Sessions Judge, Banaskantha at Palanpur in Sessions Case No. 30 of 1985, by which the respondents are acquitted of the offences punishable under section 498-A and 302 read with section 34 and / or 114 Indian Penal Code.

2. The facts emerging from the record of the case are as under.

Complainant Krishnagopal Badriprasad Goyal is resident of Byavar town situated in the State of Rajasthan. He is residing with his parents, brothers and younger sister. Deceased Kusum was his elder sister. It may be mentioned that earlier respondent No.1 was married to a girl named Kanta and during subsistence of her marriage with the respondent No.1 deceased Kanta had given birth to a boy named Mahesh but at the time of second pregnancy she expired, and therefore, on the recommendation of respondent No.3 who was wife of elder brother of the respondent No.1, marriage of deceased Kusum was arranged with the respondent No.1. The marriage between deceased Kusum and the respondent No.1 was solemnised on January 23, 1979. After marriage deceased Kusum started residing at her matrimonial home situated at Amirgadh. The case of original complainant was that deceased Kusum was subjected to mental and physical cruelty by elder brother of her husband and wife of the elder brother because of poor economic condition of the complainant. It was also his case that in order to do away with deceased Kusum, the respondents hatched a conspiracy, subjected her to cruelty. The incident in question took place on April 16,1982. On that day Kalyan Malji, who is father of respondent no.3 and who is staying at Byavar came to the house of the complainant and informed him that he had received phone call from in-laws of Kusum that Kusum was dead. In order to verify the information conveyed to him, complainant telephoned at Amirgadh and after ascertaining that Kusum had died he in the company of his relatives proceeded to Amirgadh and reached Amirgadh in the morning of April 17, 1982. The complainant was not accompanied by his father as he was busy in his work at Ranchi. After reaching Amirgadh the complainant tried to know from the respondents, the cause of death of the deceased but no satisfactory explanation was given to him. On further inquiry the complainant was

informed that deceased was found dead in the bathroom of the house. The case of the complainant is that there upon he inspected the bathroom but did not find signs of fire. It was also his case that, an attempt was made by him to lodge complaint against the respondents for commission of murder of the deceased but the police refused to register the complaint. According to the complainant deceased was murdered by the respondents. Under the circumstances he lodged complaint in the Court of Learned Chief Judicial Magistrate, Palanpur against the respondents as well as father of the respondent No.1 and requested the Court to try the respondents for commission of murder of the deceased.

3. The complaint lodged by the complainant was registered and the learned Judge ordered an inquiry into the matter as contemplated by section 202 of the Code of Criminal Procedure, 1973. After inquiry, learned Judge was satisfied that the offences, including an offence exclusively triable by the Court of Sessions was prima facie committed by the respondents. Learned Magistrate, therefore, committed the case to Sessions Court, Banaskantha at Palanpur for trial, where it was numbered as Sessions Case No. 30 of 1985.

4. The learned Addl. Sessions Judge, Banaskantha at Palanpur to whom the case was made over for trial framed charge against 7 accused at exhibit-2, as before committal proceedings original accused no.4 who was father-in-law of deceased Kusum expired. The charge was read over and explained to the accused. They pleaded not guilty to the same and claimed to be tried. The prosecution therefore examined; (1) Dr. Mahendrakumr Sarabhai Maniar as PW No.1, at exhibit-18; (2) Krishnagopal Badriprasad Agrawal as PW No. 2, at exhibit-20; and (3) Ram Nivas Vagmal Agrawal as PW No.3, at exhibit-22 to prove its case against the accused. The prosecution also produced documentary evidence such as complainant lodged by Krishnagopal Badriprasad Goyal against the respondents and another before the learned Chief Judicial Magistrate, Palanpur at exhibit-16, Inquest report at exhibit-17, postmortem notes of the deceased prepared by Dr. Maniar at exhibit-19, map of place of incident at exhibit-21, panchnama of place of incident at exhibit-23 etc. in support of its case against the accused.

5. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the accused the circumstances appearing against them in the evidence of prosecution witnesses and recorded their

statements as required by section 313 of the Code of Criminal Procedure. In their further statements case of each of the accused was that of total denial. No defence evidence was adduced by any of the accused. However, each accused submitted written statement for consideration of the Court.

6. On appreciation of evidence adduced by the prosecution the learned Judge held that, it was not proved by the prosecution beyond reasonable doubt that deceased Kusum died a homicidal death. It was deduced by the learned Judge that, it was not proved by the prosecution at all that the accused had poured kerosene on deceased Kusum and set her ablaze. It was further held by the learned Judge that no reliable evidence was led by the prosecution to establish that the deceased was subjected to cruelty within the meaning of section 498-A of I.P. Code. In view of above referredto conclusions the learned Judge has acquitted the respondents by judgment dated August 18, 1986, giving rise to instant appeal.

7. Mr. I.M. Pandya, learned counsel of the State Government contended that the 18 circumstances which have been enumerated by the complainant in para-12 of the testimony of the complainant would show that deceased Kusum was murdered by the respondents after pouring kerosene over her and setting her ablaze, as a result of which instant appeal should be accepted. It was argued that, had the deceased committed suicide by pouring kerosene over her and setting herself on fire she would have raised shouts, but her shouts were not heard by any of her neighbours which is quite evident from the testimony of witness Ram Nivas Vagmal Agrawal examined at exhibit-22 and therefore, learned Judge was not justified in coming to the conclusion that deceased had committed suicide. The learned counsel of the State Government contended that the evidence on record has not been properly appreciated by learned Judge of the trial Court in its true perspective, and therefore, the appeal should be accepted.

8. It may be stated that, initially the respondents were represented by their learned lawyer Mr. B.P. Joshi. However, it was reported to the Court that Mr. B.P. Joshi, learned advocate has left India for good and settled in USA. On some occasions the Registry had shown appearance of Mr. Baiju Joshi, learned advocate practising in this Court as apeparing on behalf of respondents no.1 to 7. However, on correct facts being pointed to the Court, the Registry was directed to delete

appearance of learned advocate Mr. Baiju Joshi as appearing on behalf of the respondents. The Registry was further directed to issue fresh notices to each respondent calling upon him to make alternative arrangement for his appearance through another lawyer or in person. The fresh notices issued have been duly received by each of the respondents. However respondents have not made any alternative arrangement for their appearance either through a lawyer or in person. Under these circumstances this Court has appointed Mr. Saurabh J. Mehta, learned counsel practicing in this Court to assist the cause of the respondents. Pursuant to the direction given by this Court paper book of Criminal Appeal No. 53 of 1987 was made available to Shri. Mehta to enable him to present case of the respondents effectively before the Court. Accordingly, Mr. Mehta, learned counsel of the respondents has gone through the whole record of the case and ably assisted the respondents as well as this Court.

9. Mr. Saurabh J. Mehta, learned counsel of the respondents contended that, none of the 18 circumstances enumerated by the complainant in para-12 of his deposition connect any of the respondents with the murder of the deceased and, therefore, this Court should not interfere with the well founded acquittal of the respondents. It was argued that the record shows that deceased was highly sentimental and emotional girl and had committed suicide because her wish to stay separate with her husband and children from other members of the family of her husband cold not be realised, and therefore, it is wrong to contend that any error is committed by the learned Judge in acquitting the respondents. Learned counsel emphasised that no evidence worth the name could be adduced by the prosecution to establish that the respondents or any of them had subjected the deceased to cruelty as defined in section 498-A of the Act or that the deceased was killed by the respondents or by any one of them, and therefore, the appeal which lacks merits should be dismissed. According to the learned counsel of the respondents, cogent and convincing reasons have been assigned by the learned Judge of the trial Court for acquitting the respondents, and, as learned Addl. Public Prosecutor has failed to dislodge them, the acquittal of the respondents should be confirmed by this Court.

10. This Court has heard Mr. I.M. Pandya, learned Addl. Public Prosecutor for the State and Mr. Saurabh J. Mehta, learned counsel of the respondents at length and in great detail. This Court has also undertaken

complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

11. Before appreciating the evidence on record it is relevant to notice that respondent no.3 i.e. Smt. Krishnadevi Badriprsad Agrawal, who was original accused no.3 expired on September 14, 2001. This is evident form the report submitted by Unarmed Police Constable and death certificate in original issued by the competent authority under the provisions of Registration of Births & Deaths Act, 1969. Section 394 of the Code inter alia provides that every appeal under section 377 or section 378 shall finally abate on the death of the accused. The fact that respondent no.3 has expired during pendency of the appeal is not in dispute. This is an appeal filed under section 378 of the Code, and therefore, it will have to be held that the appeal has finally abated against respondent no.3 on her death. Accordingly, it is held that the appeal filed by the State Government against the respondent no.3 has finally abated on her death on September 14, 2001.

12. In order to prove his case of murder of the deceased by the respondents, the complainant has mentioned 18 suspicious circumstances in para-12 of his testimony. They are as under :-

(1) Deceased Kusum was complaining orally as well as in letters written by her and, therefore, it indicated that she was not happy at the house of her in-laws.

(2) When complainant and others went to Amirgadh after receiving information about the death of deceased Kusum, an attempt was made to ascertain cause of death of the deceased but the only answer given by the respondents was that none of them was knowing anything about the incident.

(3) Deceased Maganlal (i.e.father-in-law of deceased who was original accused No.4) had informed the complainant that dead body of the deceased was lying in bath room in a burnt condition.

(4) When the bath room was inspected by him, no signs of fire were found in the bath room.

(5) Complainant was informed by Maganlal that deceased had committed suicide by pouring

kerosene kept in a measuring vessel of 500 m.l., but such a small quantity of kerosene would not be sufficient to commit suicide.

(6) If the say of Maganlal that deceased had committed suicide is accepted, then, match box which was found lying also would have been burnt, but the match box was found intact condition which in turn indicates that deceased had not committed suicide.

(7) The door of bathroom was open whereas its stopper was in proper condition.

(8) The size of the bath room is such that it would be possible for a person to sit therein with great difficult and, therefore, dead body of the deceased could not have been found in a lying position in the bath room.

(9) A person who receives superficial and minor burn injuries would normally raise shouts but the neighbours say that they had not heard shouts of the deceased which rules out the theory of suicide by the deceased.

(10) Dead body of the deceased was cremated in their absence.

(11) Those who had attended cremation had informed him that the ceremonies which would normally be performed at the time of normal cremation were not performed at all.

(12) Those who had attended the cremation had told him that no burn injuries were found on the face of the deceased, whereas hair of the deceased were not burnt at all.

(13) Before this incident, first wife of Vishnuprasad i.e. respondent no.1 had died because of burn injuries.

(14) In the same house if the wife of the respondent No.1 dies in the same manner as the first wife had died, it raises a doubt.

(15) On the day of incident, the respondents had kept doors of the house closed from 6.00 a.m. to 10.00 a.m.

(16) The respondents had not expressed their sorrow or unhappiness before the persons residing in the mohalla or village regarding death of the deceased.

(17) 15 days prior to her death, the deceased in company of the respondent no.1 had come to Byavar for tonsure ceremony of their child and at that time deceased had told him not to send her to her matrimonial home as it was apprehended by her that she would be killed by the respondents.

(18) Respondents were beating the deceased and not giving any food to eat to the deceased or clothes which raises a doubt that her death was caused by the respondents.

13. A fair and reasonable reading of the circumstances pointed out by the complainant in his testimony would show that, except raising some doubts no concrete evidence has been adduced against the respondents or any of them which would establish commission of murder of the deceased. It is relevant to notice that complainant has not stated anything in his whole testimony against deceased Maganlal who was initially arraigned as accused no.4 in the complaint which was filed before the learned Chief Judicial Magistrate. In para-13 of his testimony the complainant has stated that during the subsistence of her marriage, deceased Kusum had not quarrelled with the respondent no.1. What is mentioned by the complainant in para-13 is that on April 17, 1982 the respondent no.1 was present and as there was no discord between his deceased sister and respondent no.1 he had taken the respondent no.1 aside and tried to know as to how the deceased had died, but the respondent no.1 had informed him that he was not knowing anything in the matter and that complainant should ask Maganlal. In para-20 of his testimony the complainant has stated that he does not know as to how much quantity of kerosene would be needed if one is inclined to commit suicide. Though he has asserted that on inspection he had not found any signs of fire in the bath room, the panchnama of place of incident produced by the prosecution at exhibit-23 would show that there were positive signs of fire having taken place in the bath room itself. The case pleaded by the complainant, namely that the size of the bathroom is so small, that it would be difficult for a person to sit in it also stands contradicted by the contents of inquest panchnama which shows that dead body of the deceased was found lying in the bathroom itself. It is true that neighbour Ram Nivas

Vagmal Agrawal examined at exhibit-22 has stated in his testimony that he had not heard any shouts which might have been raised by the deceased. However, that fact by itself would not establish commission of murder of the deceased by the respondents nor does it rule out suicide by the deceased. The complainant had attempted to produce some letters addressed by the deceased to the complainant. However they have not been exhibited, though they are referred to and discussed by the learned Judge of the trial Court to find out whether offence punishable under section 498-A was committed by the respondents. This Court has also gone through the letters which were sought to be produced by the complainant. A fair reading of those letters makes it more than clear that the deceased was highly emotional and sentimental. In no letter it is mentioned by her that she was subjected to beating by any of the respondents. At the best the grievance raised by the deceased was that she was made to attend household work and no other female member was helping her. It may be stated that, strangely, the officer who had investigated suicidal death of the deceased is not examined as one of the witnesses, though that by itself would not be a ground to disbelieve the testimony of complainant Krishnaprasad Badriprasad Goyal, if it is otherwise found to be trustworthy and cogent. However, as observed earlier, testimony of the complainant does not establish commission of offence by the respondents punishable under section 302 and/or 498-A I.P. Code. Therefore, the fact that the investigating officer is not examined cannot be over looked by the Court while determining the question whether acquittal of the respondents is well founded. The learned Judge of the trial Court has recorded cogent and convincing reasons for acquitting the respondents of the offences punishable under section 302 and 498-A r/w 34 and/or 114 I.P. Code which are to be found in paragraphs no. 13 to 25 of the impugned judgment and this Court fully concurs with those reasons.

14. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Judge who had opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Judge, this Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for

acquittal given by the learned Judge and, in view of this Court, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967, S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On over all appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents. The learned Additional Public Prosecutor has failed to convince this Court to take the view contrary to the one already taken by the learned Judge and, therefore, the appeal is liable to be dismissed.

14. For the foregoing reasons, the appeal fails and is dismissed. Bail bonds, if executed by the respondents, shall stand cancelled. Muddamal to be disposed of in terms of the directions given by the learned Judge in the impugned judgment.

19-1-2004 [J.M. PANCHAL, J]

[S.R. BRAHMBHATT, J]

/vgn